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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,261	08/06/2003	Brian G. Morin	5243A	9472

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EXAMINER

SALVATORE, LYNDIA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,261

Applicant(s)

MORIN ET AL

Examiner

Lynda M. Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/28/03, 03/19/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1,16,28 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Specifically claims 1,16,28 and 37 are indefinite because it is not understood how the recited "fiber" possesses a denier per filament. In other words, fibers generally have only a denier range and the recitation of denier per filament implies that the fiber is a yarn.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-51 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U. S. Patent No. 6,794,033. Although the conflicting claims are not identical, they are not patentably distinct from each other because US

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'033 claims a polypropylene tape fiber having the claimed nucleating agent and several of the claimed features of the instant application. Though, US '033 does not specifically claim a fabric as recited in the instant application, it would be obvious to form a fabric article from the polypropylene tape fibers of US '033, especially since the supporting disclosure seems only to envisage fabric utilities.

6. Claims 1-51 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U. S. Patent No. 6,541,554. Although the conflicting claims are not identical, they are not patentably distinct from each other because US '554 claims a polypropylene tape fiber having the claimed nucleating agent and several of the claimed features of the instant application. Though, US '554 does not specifically claim a fabric as recited in the instant application, it would be obvious to form a fabric article from the polypropylene tape fibers of US '554, especially since the supporting disclosure seems only to envisage fabric utilities.

7. Claims 1-51 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/268329. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter sought in the instant application encompasses the subject matter sought in the application 10/268329.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-51 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of copending

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Application No. 10/422187. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter sought in the instant application encompasses the subject matter sought in the application 10/422187.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102/103

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4,7,10,13-17,20-29,32-38,41-46 and 51 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Conner et al., US 5,798,167.

The patent issued to Conner et al., teaches a thermally bonded spunbond web of thermoplastic fibers (Abstract). The thermoplastic filaments are formed from a thermoplastic polymer and an effective amount of a nucleating agent (Abstract). The resulting thermoplastic filaments are formed into fabric laminate comprising a spun bonded and non-woven layer

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(Abstract). Suitable polymers include the claimed polypropylene (Abstract). Suitable nucleating agents include di(methylbenzylidene) sorbitol, and bis (p-ethylbenzylidene) sorbitol (Abstract). Conner et al., teaches that .1 to .3 percent by weight of the mixture constitutes an effective amount of nucleating agent (Column 2, 56-60). With regard to the parts per million (ppm) limitation recited in claims 13,14,26,27,34,35,and 44-46 using the conversion that 1 % is equal to 10000 ppm it follows that the percent by weight range of .1 to .3 would be equal to 1000 to 3000 ppm. Table 5, illustrates various fiber strength properties such as a fiber denier of 4.1. For purposes of examination the limitation of “at most” is interpreted as any denier ranging from 0 to the upper limit.

With regard to the heat-shrinkage properties, fiber peak crystallization temperatures and a long period of at least 20nm, although Conner et al., does not explicitly teach the claimed features it is reasonable to presume that said heat-shrinkage properties, fiber peak crystallization temperatures and a long period of at least 20nm are inherent to the invention of Conner et al. Support for said presumption is found in the use of like materials (i.e., polypropylene and nucleating agents such as di(methylbenzylidene) sorbitol, and bis (p-ethylbenzylidene) sorbitol) and the use of like process such as the amount of nucleating agent added to the polypropylene polymer, which would result in the claimed heat-shrinkage properties, fiber peak crystallization temperatures and a long period of at least 20nm. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, the presently claimed property of heat-shrinkage, fiber peak crystallization temperatures and a long period of at least 20nm would have obviously been present once the Conner et al., product is provided. *In re Best*, 195 USPQ 433

With specific regard to claim 51, Conner et al., does not explicitly teach molding the spun-bond fabric, however, it is the position of the Examiner that the embossing shown therein supports the limitation of molding.

Claim Rejections - 35 USC § 103

11. Claims 5,6,8,9,11,12,18,19,30,31,39,40 and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conner et al., US 5,798,167 as applied to claims 1,16,28 and 37 above, and further in view of Nakajima et al., US 6,207,600.

Conner et al., fails to teach the formation of a knit or woven fabric from the polypropylene filaments, however, the patent issued to Nakajima et al, discloses a fiber forming polypropylene composition, which may optionally include additional additives such as a nucleating agent (Abstract and Column 8, 49-52). The polypropylene composition is suitable to process into multi and monofilaments, staple fibers, tow, web, non-woven fabric and knit fabric (Column 9, 1-5). Although, Nakajima et al., fails to explicitly state a woven fabric, many of the final products taught by Nakajima et al., are well known in the art to be woven materials (e.g., shirts, sheets, gauze, etc.) (Column 10, 16-34).

Therefore, motivated to expand the number of applications of the polypropylene fiber forming composition it would be obvious to one having ordinary skill in the art at the time the invention was made to form a woven or knit fabric as disclosed by Nakajima et al., from the fiber forming polypropylene composition of Conner et al.

With regard to the area shrinkage properties after five home washings as recited in claims 47-50 it is reasonable to presume that said area shrinkage properties are inherent to the invention provided by the combination of Conner et al., in view of Nakajima et al. Support for said

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presumption is found in the use of like materials (i.e., polypropylene and nucleating agents such as di(methylbenzylidene) sorbitol, and bis (p-ethylbenzylidene) sorbitol) and the use of like process such as forming various fabric articles (e.g., wovens and knits), which would result in the claimed area shrinkage properties after 5 washings.

Conclusion

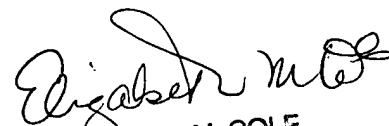
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,560,734

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 29, 2005
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ELIZABETH M. COLE
PRIMARY EXAMINER